

Humberto M. Guizar, Esq., (SBN 125769)
GUIZAR, HENDERSON & CARRAZCO, L.L.P.
18301 Irvine Blvd. Tustin, CA 92780
Telephone No.: (714) 541-8600
Facsimile No.: (714) 541-8601
E-Mail: herito@aol.com

Attorneys for Plaintiffs
ANDREW GARCIA,

WOODRUFF, SPRADLIN & SMART, APC
DANIEL K. SPRADLIN – State Bar No. 82950
dspradlin@wss-law.com
CAROLINE A. BYRNE – State Bar No. 196541
cbyrne@wss-law.com
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626-7670
Telephone: (714) 558-7000
Facsimile: (714) 835-7787

Attorneys for Defendants CITY OF GARDEN GROVE, a public
entity and OFFICER BRYAN MEERS, an employee of Defendant
City of Garden Grove, a public entity

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ANDREW GARCIA,

Plaintiffs,

vs.

CITY OF GARDEN GROVE,
BRYAN MEER, and DOES 1
through 10, inclusive,

Defendants.

) **CASE NO: 8:16-cv-00154 DOC (KESx)**
)
) **Hon. KAREN E. SCOTT**
)
) **DISCOVERY MATTER**
)
) **JOINT DISCOVERY MOTION TO**
) **COMPEL DEFENDANT CITY OF**
) **GARDEN GROVE TO PRODUCE**
) **DOCUMENTS**
)

**[Declaration of Humberto Guizar
and attached exhibits in support;**

**[Proposed] Order; filed
concurrently herewith]**

Hearing Date: Tuesday Oct. 25, 2016
Time: 10:00 a.m.
Place: Courtroom 6 D
Before Hon. Karen E. Scott
Discovery cut-off Date: July 10, 2017
Pre-Trial Conference: October 2, 2017
Trial Date: October 10, 2017

The following parties have appeared through their respective Counsel, and participated in the preparation of this Joint Discovery Motion.

Party	Counsel
Plaintiff; Attorneys for Plaintiffs ANDREW GARCIA	Humberto Guizar Esq., GUIZAR, HENDERSON & CARRAZCO, L.L.P. 18301 Irvine Blvd. Tustin, CA 92780 Telephone No.: (714) 541-8600 Facsimile No.: (714) 541-8601
Defendants, City of Garden Grove, Bryan Meers, and DOES 1 through 15 inclusive	Caroline A. Byrne Esq., WOODRUFF, SPRADLIN & SMART 555 Anton Boulevard, Suite 1200 Costa Mesa, CA 92626 Telephone No.: (714) 558-7000 Facsimile No.: (714) 835-7787

**TO THE HONORABLE KAREN E. SCOTT, UNITED STATES
MAGISTRATE JUDGE:**

Pursuant to Local Rule 37-2.1, the parties hereby submit this joint stipulation in support of Plaintiff ANDREW GARCIA'S motion to compel further responses to

1 Plaintiff's First Set of Requests for Production of Documents, properly served on
2 Defendant City of Garden Grove. Please See; Plaintiff's Exhibit [A]. Defendant
3 City of Garden Grove timely served responses to the Request for Production of
4 Documents and attached a declaration to the responses. Please See Plaintiff's
5 Exhibit [B] and [C]. In order to comply with Local Rule 37-1, Plaintiff's counsel
6 served a 3-page meet and confer letter on defendants on September 8, 2016. Please
7 see Plaintiff's Exhibit [D]. On September 9, 2016, Defendant's counsel requested a
8 limitation on the documentation sought and requested any authority to support
9 Plaintiff's contentions. Please see Exhibit [H] attached to the Declaration of
10 Michael Tam. Thereafter on September 13, 2016 Plaintiff sent Defendant's counsel
11 an e-mail with an explanation and authority supporting Plaintiff's request for the
12 information. Please see Plaintiff's Exhibit [F]. On September 19, 2016, less than an
13 hour before the scheduled in-person meet and confer conference, Plaintiff served
14 another follow up 21-page meet and confer letter, attached to this motion as Exhibit
15 [E]. The parties met and conferred in person, on September 19, 2016. Defendant
16 requested four days to review and address Plaintiff's Exhibit [E]. Plaintiff refused
17 to allow time to review the late delivered meet and confer letter. Please see Exhibit
18 [I] attached to the Declaration of Michael Tam.

19 The parties were unable to resolve the discovery disputes as detailed in this
20 joint stipulation. Pursuant to Local Rule 37-2.1, a copy of the order establishing the
21 current case schedule and the original scheduling order with the current discovery
22 cut-off date is attached as Exhibit [G] to the declaration of Humberto Guizar filed
23 herewith.

24 ///

25 ///

26 ///

1 Dated: September 27, 2016

Respectfully submitted,

2 LAW OFFICES OF HUMBERTO GUIZAR

3 By: /s/
HUMBERTO GUIZAR
4 Attorneys for Plaintiff
5 ANDREW GARCIA
6

7 Dated: September 26, 2016

WOODRUFF, SPRADLIN & SMART APC

8
9 By: /s _____
10 Caroline Byrne
11 Attorneys for Defendant
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

Page No:

I. PLAINTIFF'S INTRODUCTORY STATEMENT, SPECIFICATION OF ISSUES IN DISPUTE.....	6-9
II. DEFENDANT CITY OF GARCEN GROVE, INTRODUCTORY STATEMENT, SPECIFICATION OF ISSUES IN DISPUTE.....	9-11
III. PARTIES' CONTENTIONS REGARDING PLAINTIFF'S DISCOVERY REQUESTS AND ARGUMENTS	11-27
IV. PLAINTIFF'S CONCLUSION.....	27-28
V. DEFENDANT'S CONCLUSION.....	28

I.**PLAINTIFF'S INTRODUCTORY STATEMENT AND
SPECIFICATION OF ISSUES IN DISPUTE****A. Introduction:**

This is a civil rights action brought by Plaintiff ANDREW GARCIA against the City of Garden Grove, Bryan Meers, and DOES 1 through 10. Plaintiff is alleging a violation of various rights under the United States Constitution causing Plaintiff to suffer catastrophic injuries.

The incident that is the subject of the lawsuit occurred on June 29, 2015 in the City of Garden Grove. Garden Grove Police Department officer Bryan Meers aggressively and in a combative manner approached Andrew Garcia while Plaintiff Andrew Garcia was lawfully resting on the sidewalk. More specifically, Bryan Meers approached Plaintiff with his firearm on hand yelling profanities at Plaintiff in a violent and aggressive manner, which caused Plaintiff Andrew Garcia to be in immediate fear for his life, which caused Plaintiff to run away from Bryan Meers.

Prior to defendant BRYAN MEERS firing his weapon at Plaintiff, Plaintiff tossed a toy pellet gun (not a firearm) away from his person. Plaintiff tossed the pellet gun because he was fearful of defendant MEERS and he did not want to give defendant MEERS an excuse to shoot him.

As the unarmed Andrew Garcia ran away from Defendant Bryan Meers, Defendant Meers proceeded to fire his weapon directly into the back of Plaintiff Andrew Garcia. This was done in cold blood. More specifically, as Plaintiff was running with his hands swinging defendant Meers positioned himself on one knee. Using his knee for leverage defendant Meers aimed at the unarmed Plaintiff and shot at him with the intent to kill him. After the shooting defendant Meers fabricated a story to explain why he fired his weapon in the manner he did. In his

1 official accounts, defendant Meers stated that Andrew Garcia was aiming a gun at
2 him as Andrew ran. This statement by defendant Meers is a blatant unequivocal lie.
3 In fact, there are eyewitnesses to the shooting that reported Andrew did not have
4 anything in his hand when defendant Meers shot Plaintiff. One eyewitness is an
5 independent civilian witness. *The other eyewitness is a reserve officer.* Both of
6 these witnesses stated that Andrew did not have anything in his hands when
7 defendant Meers aimed his gun and fired into Andrews's back. The physical
8 evidence is consistent with Andrew being shot with his back facing defendant
9 Meers.

10 As a result of being shot multiple times, Plaintiff sustained visible and
11 traumatic physical injuries that were life threatening and permanently disabling.
12 Despite these obvious injuries, and life threatening condition, Andrew Garcia was
13 held at the scene the shooting for ½ hour before medical personnel was summoned
14 to assist him, and on information and belief, Andrew Garcia did not refuse medical
15 aid at the scene. Mr. Garcia continues to suffer as a result of this unjustified
16 shooting. He is permanently scarred and disfigured, and he suffers with major
17 physical disabilities 24 hours a day.

18 During the entire encounter described above, Plaintiff did not verbally
19 threaten attempt to use any kind of force on any person. Plaintiff never aimed a
20 weapon in the direction of defendant Meers. Furthermore, at the time of the
21 shooting, defendant MEERS had no information that ANDREW GARCIA had
22 committed any crime or that he was threatening any other person with harm. In fact,
23 ANDREW GARCIA had not committed any crime of any kind.

24 Defendant, Meers, and Defendant CITY were provided with additional
25 information demonstrating that Andrew Garcia had not committed any crime(s), but
26 intentionally disregarded it and instead took steps to cover-up the misconduct. On
27

1 information and belief, defendant MEERS acted with deliberate indifference and
 2 with the intent and purpose to harm Plaintiff unrelated to any legitimate law
 3 enforcement objective.

4 During the time defendant MEERS was shooting at plaintiff with his firearm
 5 he acted with deliberate indifference and with the specific intent and purpose to
 6 harm Plaintiff unrelated to any legitimate law enforcement objective.

7 The conduct of Defendants BRYAN MEERS, was willful, wanton, malicious
 8 and done with an evil motive and intent and a reckless disregard for the rights and
 9 safety of Plaintiff ANDREW GARCIA and therefore Plaintiff alleges Defendant
 10 Bryan Meers violated Plaintiff's federal constitutional and state common law rights.

11 More specifically, Plaintiff is making the following legal claims:

- 12 1. Unreasonable Search and Seizure-Detention and Arrest (42 U.S.C. § 1983);
- 13 2. Unreasonable Search and Seizure-Excessive Force and Denial of Medical
 14 Care (42 U.S.C. § 1983);

15 Plaintiff is also making the following State law claims:

- 16 1. Assault and Battery;
- 17 2. General Negligence.

18 Plaintiff is seeking compensatory damages, exemplary damages, punitive
 19 damages and attorney's fees against all of individual defendants.

20 **B. Discovery Issue in Dispute:**

21 On July 13, 2016 Plaintiff Andrew Garcia served Defendant City of Garden
 22 Grove a Request for Production of Documents, set 1, (attached to this Motion as
 23 Exhibit (A)). In this discovery request, Plaintiff requested the defendant to produce
 24 relevant documents regarding defendant Meers' personnel file that can only be
 25 obtained from the defendants.

1 On August 15, 2016, Defendant City of Garden Grove objected to requested
2 items numbers; Items 20, 21, 22, 25, 26, 30, and 33. Defendants also submitted a
3 Declaration of a Garden Grove Police Department Chief Mciver in support of
4 defendant's refusal to produce the documents requested. Please See Exhibit [C],
5 attached to this motion.

6 Plaintiff is moving to compel production of the discovery requested because
7 the information sought is relevant to Plaintiffs federal claims against Defendants
8 City of Garden Grove and Bryan Meers.

9 II.

10 DEFENDANT'S INTRODUCTORY STATEMENT AND 11 SPECIFICATION OF ISSUES IN DISPUTE

12 This case arises out of an officer involved shooting of Plaintiff when he
13 refused to drop his weapon, running and pointing his gun at a City of Garden Grove
14 police officer. On June 29, 2015, an off-duty City of Santa Ana police officer was
15 driving on his way to work when he saw Plaintiff holding a semi-automatic
16 handgun. The Santa Ana police officer called dispatch and reported Plaintiff
17 walking openly with a gun in his hand. The Santa Ana officer identified that
18 Plaintiff put the gun in his waistband and repeatedly reached for it while walking.
19 The officer also stated that Plaintiff displayed odd behavior that led him to believe
20 he was possibly under the influence of drugs. At this time, two undercover officers
21 followed Plaintiff in an unmarked vehicle while he walked with the gun down a
22 residential street. Plaintiff then started to walk to the end of a cul-de-sac to a
23 walkway that led onto Chapman Avenue, a main thoroughfare.

24 Officer Bryan Meers responded to the call of a man with a gun and drove his
25 marked police unit towards Plaintiff as he walked towards the end of the street.
26 Officer Meers got out of his vehicle and commanded Plaintiff to stop. Plaintiff
27

1 refused to comply with the verbal command and ran through the walkway onto
2 Chapman Avenue. As Officer Meers followed Plaintiff, Plaintiff removed the gun
3 from his waistband and pointed the gun at Officer Meers. Fearing for his life,
4 Officer Meers fired his weapon and ultimately hit Plaintiff in the right shoulder and
5 right foot, which caused Plaintiff to stop running with the gun. Officer Meers
6 immediately called for paramedics and began rendering first aid. After paramedics
7 responded, Plaintiff was transported to UCI Medical Center. After the fact, it was
8 noted that the gun Plaintiff was brandishing was a replica gun, however, there was
9 no orange tip or any other delineating marker to distinguish it as a pellet gun and
10 indeed, it exactly resembled a Beretta.

11 By this motion, Plaintiff seeks to discover information protected by the
12 official information privilege. Even if the privilege did not apply, Plaintiff's request
13 seeks information that has no possible bearing on any claim or defense. This case
14 arises out of a June 29, 2015 officer involved shooting. Plaintiff alleges claims of
15 excessive force against Defendants. Plaintiff seeks documents related to incidents
16 that may have happened after this incident along with incidents and/or training
17 unrelated to the alleged constitutional violation of excessive force.

18 Contrary to the Plaintiff's argument, the Declaration of Sergeant Craig
19 McIver establishes the applicability of the official information privilege. As
20 identified in the declaration, the release of officer personnel and investigatory files
21 would seriously interfere and compromise the Department's ability to investigate
22 and obtain candid disclosure from witnesses and police officers involved in the
23 incidents.

24 Further, there is no possible relevance of any subsequent incident, incidents
25 unrelated to use of force or training unrelated to use of force. To prove a Monell
26 claim, Plaintiff must show that prior to June 29, 2015, there existed a long-standing
27

1 persistent custom that was the moving force behind the alleged constitutional
2 violation. Subsequent incidents along with incidents and/or training unrelated to
3 the constitutional violation have no relevance. Plaintiff seems to argue that because
4 he made the wild and unsupported allegation that Officer Meers lied when he
5 provided his statement to the District Attorney that all inquiries are fair game. This
6 is illogical and not supported by any authority.

7 Plaintiff failed to meet and confer in good faith. Plaintiff initially sent a letter
8 on September 8, 2016 without referencing a single statute or case. Defendant
9 pointed this issue out in a September 9, 2016 letter, requesting information and
10 authority to support Plaintiff's position. Defendant also requested information and
11 authority to allow for the discovery of subsequent incidents or information
12 unrelated to use of force. Plaintiff's only response was that the official information
13 privilege did not apply under the ten factors in Frankenhauser v. Rizzo, 59 F.R.D.
14 339, 344 (E.D. Pa. 1973). There was no analysis or identification of the factors that
15 did or did not apply. Instead, Plaintiff waited until thirty minutes before the
16 September 19, 2016 in-person meet and confer conference to deliver a 21-page
17 letter. Defendant requested a mere four extra days to review the letter and
18 authorities, however, Plaintiff refused to allow any time, sending this stipulation the
19 night of the conference.

20 Even if documents are ordered to be produced, the materials should be
21 limited to items in the personnel file and/or internal affairs investigations related to
22 claims of excessive force made prior to June 29, 2015.

23 **III.**

24 **(i) PARTIES' CONTENTIONS REGARDING PLAINTIFF'S**

25
26
27
28

**DISCOVERY REQUESTS AND ARGUMENTS PLAINTIFF
ANDREW GARCIA REQUEST FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT CITY OF GARDEN GROVE,
SET 1, ITEM NO. 20.**

"Any and all internal affairs investigations of Garden Grove Police Officer,
Defendant, Bryan Meers."

**(ii) DEFENDANT CITY OF GARDEN GROVE RESPONSE
TO REQUEST FOR PRODUCTION SET 1, ITEM NO. 20.**

Please See; "DECLARATION OF SERGEANT CRAIG MCIVER IN
SUPPORT OF OFFICIAL INFORMATION PRIVILEGE CLAIMED", attached to
this Motion as Exhibit [D]

**(iii) PLAINTIFF'S ARGUMENT FOR COMPELLING
PRODUCTION OF DOCUMENTS REQUESTED
BY REQUEST TO PRODUCE, SET 1, ITEM NO. 20.**

These documents are not privileged from disclosure in this civil rights action
or otherwise barred from disclosure by the Official Information Privilege.

Based on the reports that have been produced so far it is clear defendant
Meers fabricated a factual scenario in order to try to justify his use of excessive
force against Andrew Garcia. Police officers are trusted by our society to protect the
public and use weapons in a safe manner. As public servants police officers have a
duty to be honest and truthful when they prepare official reports explaining their
use of deadly force. In this case, it is apparent defendant Meers lied when he
officially explained his version of the shooting. Therefore, defendant Meers prior
conduct and behavior as a police officer is a subject matter that Plaintiff must be
able to examine. As shown in the introductory statement and history of this case,

1 the information sought by Plaintiff is relevant and necessary for Plaintiff to properly
2 prove his claims against defendant BRIAN MEERS.

3 Prior to the filing of this motion, Plaintiff's counsels signed a protective order
4 to protect the privacy of the defendant officer or other 3rd parties. Nonetheless, the
5 defendant has refused to provide the information and has instead has forced
6 Plaintiff to file this discovery motion.

7 F.R.C.P. 26(b)(1) provides a broad discovery scope: "Parties may obtain
8 discovery regarding any matter, not privileged, which is relevant to the subject
9 matter involved in the pending action, whether it relates to the claim or defense of
10 the party seeking discovery or to the claim or defense of any other party, including
11 the existence, description, nature, custody, condition, and location of any books,
12 documents, or other tangible things and the identity and location of persons having
13 knowledge of any discoverable matter. The information sought need not be
14 admissible at the trial if the information sought appears reasonably calculated to
15 lead to the discovery of admissible evidence."

16 Furthermore, In a federal question case like this one, questions of evidentiary
17 privilege are governed by federal common law. United States v. Zolin, 491 U.S.
18 554, 562 (1989). A federal court is not bound to recognize state privileges in federal
19 question cases. See Garrett v. City and County of San Francisco, 818 F.2d 1515,
20 1519 fn.6 (9th Cir. 1987).

21 Nonetheless, in this case the City of Garden Grove in response to the
22 discovery requested by Plaintiff attached a self-serving declaration of Garden Grove
23 Police Department Sergeant McInis. Sergeant Mcinis states the documents sought
24 cannot be produced because it would compromise the operations of the Garden
25 Grove police department, in particular its ability to supervise its officers. There is
26 no merit to Sergeant McInis assertions whatsoever. Not one single example of how
27
28

1 production of such records has damaged the department was referenced in the
2 declaration of Sgt. Mcinis, nor is there any empirical data or evidence to support
3 this frivolous assertion.

4 Conversely, the officer's interest in being protected against the disclosure of
5 information about prior involvement in disciplinary proceedings or citizen
6 complaints is not the kind of highly personal information that warrants unlimited
7 protection. See King v. Conde, 121 F.R.D. 180, 191 (E.D.N.Y. 1988) ("The privacy
8 interest in non-disclosure of professional records should be especially limited in
9 view of the role played by the police officer as a public servant who must be
10 accountable to public review."); also see, Ramirez v. County of Los Angeles, 231
11 F.R.D. 407, 411 (C.D. Cal. 2005); and Ceramic Corp. of America v. Inka Mar.
12 Corp., 163 F.R.D. 584, 589 (C.D. Cal.1995) ("In recent years, the courts have
13 routinely ordered the production of personnel files of third parties in . . . police
14 brutality cases.").

15 The only recognized federal privilege is the official information privilege,
16 drawn from Sanchez v. City of Santa Ana, 936 F.2d 1027 (9th Cir. 1991)). "In order
17 to determine whether personnel files sought are privileged, courts must weigh
18 potential benefits of disclosure against potential disadvantages; if the latter is
19 greater, the official information privilege may bar discovery." *Id.*, at 1033-34.
20 "Such balancing should be conducted on a case by case basis, determining what
21 weight each relevant consideration deserves in the fact-specific situation that is
22 before the Court. This balancing test has been moderately pre-weighted in favor of
23 disclosure." Miller v. Pancucci, *infra*, at 300. The federal official information
24 privilege applies only if the plaintiff has no need for the information. Sanchez v.
25 City of Santa Ana, 936 F.2d 1027, 1033-34 (9th Cir. 1990), cert. den'd. 502 U.S.
26 957, 112 S. Ct. 417 (1991); Kerr v. United States Dist. Court. for N.D. Cal., 426
27
28

1 U.S. 394, 96 S. Ct. 2119 (1976). In Soto v. City of Concord, 162 F.R.D. 603, 618
2 (N.D. Ca 1995) the court found that, where the defendants asserted only "the
3 general proposition that internal affairs investigatory documents and statements of
4 police officers and/or witnesses should remain secret in order to encourage `frank
5 discussions," that assertion was "insufficient to meet the threshold test for invoking
6 the official information privilege." 162 F.R.D. at 614. Moreover, the Court noted
7 that the defendants failed to address how disclosure pursuant to a protective order
8 "would create a substantial risk of harm to significant government interests." Id.

9 The City of Garden Grove cannot establish that disclosure pursuant to a
10 protective order would create a substantial risk of harm to significant government
11 interests because there is no evidence to support that assertion. Sgt. Mcinis claims
12 that production would damage the department is pure hyperbole. In the absence of
13 any such evidence the City must produce all of the documents requested by
14 Plaintiff.

15 Another helpful authority, Kelly v. City of San Jose 114 F.R.D. 653 (N.D. Ca
16 1987) states that the balancing test should be moderately pre-weighted in favor of
17 disclosure based on the public policy that privileges should be narrowly construed
18 and the policy supporting the enforcement of the civil rights statutes through civil
19 actions filed by aggrieved private parties. 114 F.R.D. at 660-662. The government's
20 confidentiality interest is not as strong, when the events are long since past and
21 there will be no further criminal prosecution or internal affairs follow-up arising out
22 of the incident. Kelly, 114 F.R.D. at 662, citing Spell v. McDaniel, 591 F.Supp.
23 1090, 1119 (E.D.N.C. 1984). In the case at hand, the Orange County District
24 Attorney's Office has already declined to prosecute Defendant Officer McInis and
25 there is no reason for his prior internal affairs investigations or any part of his
26
27
28

1 personnel file to be withheld. This authority applies whether the information
2 predates the incident or is post incident.

3 **(iv) DEFENDANT’S ARGUMENT AGAINST COMPELLING**
4 **A FULL RESPONSE TO PLAINTIFF’S REQUEST TO**
5 **PRODUCE SET 1, ITEM NO. 20.**

6 The official information privilege is applicable to this request. As identified
7 in the declaration of Sgt. McIver, the release of officer personnel and investigatory
8 files would seriously interfere and compromise the Department’s ability to
9 investigate and obtain candid disclosure from witnesses and police officers
10 involved in the incidents.

11 Even if the Court finds that the official information privilege does not
12 prevent disclosure of personnel records, the documents produced should be limited
13 in scope. Because this information would only be relevant to a claim under Monell,
14 production should be limited to prior acts and training related to the alleged
15 constitutional violation of excessive force. Any training or incident unrelated to the
16 constitutional violation alleged or any subsequent incident cannot be the “moving
17 force” behind the constitutional violation.

18 **A. DISCOVERY STANDARD**

19 Discovery is not unlimited. Rather, each party only has the right to discover
20 “any nonprivileged matter that is relevant to any party’s claim or defense.”
21 (Fed.R.Civ.P. 26(b)(1)) Discovery requests must be reasonably calculated to lead
22 to the discovery of admissible evidence. “[D]iscovery, like all matters of
23 procedure, has ultimate and necessary boundaries.” [Citations omitted] Discovery
24 of matter not ‘reasonably calculated to lead to the discovery of admissible evidence’
25 is not within the scope of Rule 26(b)(1). (Oppenheimer Fund, Inc. v. Sanders, 437
26 U.S. 340, 351-52 (1978)) A discovery request should not be allowed if it is clear
27

1 that the information has no possible bearing on the claim or defense of a party. (In
 2 re Toys R Us-Delaware, Inc. Fair & Accurate Credit Transactions Act (FACTA)
 3 Litig., 2010 WL 4942645, *1 (C.D. Cal. 2010)

4 Evidence of a subsequent shooting has no bearing on Plaintiff's Monell claim
 5 nor can it be used for any other reason.

6 **B. THE OFFICIAL INFORMATION PRIVILEGE PREVENTS**
 7 **DISCLOSURE OF THE DOCUMENTS REQUESTED**

8 The declaration of Sgt. McIver establishes the applicability of the official
 9 information privilege. In Kelly v. City of San Jose, 114 F.R.D. 653, 669-670 (N.D.
 10 Cal. 1987), the Court held that in order to establish the applicability of the official
 11 information privilege, the declaration from the agency official must state:

12 “(1) an affirmation that the agency generated or collected the material in issue
 13 and has in fact maintained its confidentiality...,

14 (2) a statement that the official has personally reviewed the material in
 15 question,

16 (3) a specific identification of the governmental or privacy interest that would
 17 be threatened by disclosure of the material to plaintiff and/or his lawyer,

18 (4) a description of how disclosure subject to a carefully crafted protective
 19 order would create a substantial risk of harm to significant governmental or privacy
 20 interests,

21 (5) and a projection of how much harm would be done to the threatened
 22 interests if the disclosure were made.”

23 The declaration of Sgt. McIver satisfies these requirements. Sgt. McIver's
 24 declaration identifies how the City of Garden Grove maintains and generates the
 25 information that is the subject of this motion. (See Exhibit C, ¶ 3-19) Second, Sgt.
 26 McIver has reviewed the information sought by Plaintiff. (See Exhibit C, ¶ 1, 5)

1 Third, Sgt. McIver adequately describes the governmental interest that would be
 2 threatened by the disclosure of material to Plaintiff and his counsel. (See Exhibit C,
 3 ¶ 6-19) Sgt. McIver addressed the fourth and fifth factors, identifying how
 4 disclosure of the items requested could compromise governmental and privacy
 5 interests. (*Id.*) Sgt. McIver also identified the potential harm that would result from
 6 any disclosure. (*Id.*)

7 Additionally, these requests seek discovery of protected internal affairs
 8 investigation reports. Any reports related to the findings, evaluations or
 9 recommendations are not discoverable. (See *Segura v. City of Reno*, 116 F.R.D. 42,
 10 45 (D. Nev. 1987) (identifying the importance of protecting documents that may
 11 chill the police self-evaluative process) (citing *Frankenhauser v. Rizzo*, 59 F.R.D.
 12 339, 344 (E.D. Pa. 1971) (holding that when determining whether internal affairs
 13 reports should be produced, the Court should consider, “the degree to which
 14 governmental self-evaluation and consequent program improvement will be chilled
 15 by disclosure.”) As noted in *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1034
 16 (9th Cir. 1990), the Ninth Circuit recognized the dangers in allowing unfettered
 17 access to internal law enforcement files and reports, refusing to allow discovery of
 18 files that could impact the disciplinary procedures within the police department.

19 **C. EVIDENCE OF INCIDENTS AND TRAINING UNRELATED TO**
 20 **THE ALLEGED CONSTITUTIONAL VIOLATION ALONG**
 21 **WITH SUBSEQUENT INCIDENTS HAVE NO BEARING ON**
 22 **PLAINTIFF’S *MONELL* CLAIM AND THEREFORE ARE NOT**
 23 **DISCOVERABLE**

24 Case law establishes that personnel files contain information that is both
 25 private and irrelevant to Plaintiff’s claims. (See *Professional Recovery Services,*
 26 *Inc. v. General Elec. Capital Corp.*, 2009 WL 137326, *4 (D.N.J. Jan. 15, 2009)

1 Discovery may be denied or must be narrowly tailored to balance the needs of the
 2 litigation against a party's reasonable expectations of privacy. (Id., Blotzer v. L-3
 3 Commc'ns Corp., 287 F.R.D. 507, 509 (D. Ariz. 2012))

4 A municipality cannot be held liable under 42 U.S.C. §1983 on a theory of
 5 respondeat superior. In order to impose municipal liability against the City,
 6 Plaintiffs must show that an existing policy or custom caused a constitutional tort.
 7 (Monell v. Dep't of Soc. Servs. of City of New York, 436 U.S. 658, 691 (1978)) “. .
 8 .[A] city is not liable under § 1983 unless a municipal ‘policy’ or ‘custom’ is the
 9 moving force behind the constitutional violation.” (City of Canton, Ohio v. Harris,
 10 489 U.S. 378, 379 (1989); See also Polk County v. Dodson, 454 U.S. 312, 326
 11 (1981)) “At the very least, there must be an affirmative link between the policy and
 12 the particular constitutional violation alleged.” (City of Oklahoma City v. Tuttle,
 13 471 U.S. 808, 823 (1985)) As such, any allegation of improper training or prior
 14 misconduct must relate to the Constitutional violation alleged in this lawsuit;
 15 excessive force. Different forms or subsequent alleged misconduct cannot be said to
 16 be the “moving force” behind the Constitutional violation alleged in this lawsuit.
 17 The same is true with regard to the officer's training materials. Cases such as
 18 Brandon v. Holt 469 U.S. 464 (1985), state that "similar incidents" can be used to
 19 prove a Monell claim. As with Brandon, the only relevant inquiry is related to pre-
 20 incident similar conduct.

21 The Ninth Circuit has held that a Plaintiff seeking to impose municipal
 22 liability must show the custom or policy was longstanding, persistent and
 23 widespread:

24 “[Plaintiff] must show a ‘longstanding practice or custom
 25 which constitutes the standard operating procedure of the
 26 local government entity.’ [Citations omitted]. The custom
 27 must be so ‘persistent and widespread’ that it constitutes a
 28 “permanent and well settled city policy.” [Citations
 omitted] Liability for improper custom may not be

1 predicated on isolated or sporadic incidents; it must be
 2 founded upon practices of sufficient duration, frequency
 3 and consistency that the conduct has become a traditional
 4 method of carrying out policy.” [Citations omitted]
 (Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996)
 holding modified by Navarro v. Block, 250 F.3d 729 (9th
 Cir. 2001))

5 Plaintiffs seek the production of documents unrelated to use of force and/or
 6 subsequent incidents. Plaintiff argue this request is discoverable for their Monell
 7 claim.

8 The only “pattern” relevant to Plaintiff’s Monell claim would be a pattern
 9 that existed prior to the June 29, 2015 event. Training or internal affairs
 10 investigations unrelated to the use of force would not be relevant to any
 11 constitutional violation alleged by Plaintiff. Any subsequent incident would only
 12 be relevant to an alleged “pattern” that developed after June 29, 2015. A pattern or
 13 custom that developed after June 29, 2015 could not have been a longstanding
 14 custom that was the driving force behind a constitutional deprivation on June 29,
 15 2015.

16 Similarly, Plaintiff cannot use a subsequent event to show the City was
 17 deliberately indifferent to the likelihood that the situation will recur. To prove their
 18 Monell claim in this manner, Plaintiff needs to establish that the City was
 19 deliberately indifferent to information that existed prior to June 29, 2015. A
 20 subsequent event cannot be used to show the City had information on June 29, 2015
 21 that showed the likelihood that the situation would recur because this information
 22 was not available to the City on June 29, 2015.

23 It is axiomatic that Monell requires that the alleged custom be in place at the
 24 time of the incident. In order to establish Monell liability, Plaintiffs must prove that
 25 a long-standing existing custom was the cause of a constitutional deprivation. A
 26 custom that developed after November 10, 2012 could not have been “long
 27

standing” or “the moving force” of the alleged constitutional deprivation on June 29, 2015. Plaintiff’s position is the equivalent of blaming an auto accident on faulty brakes that were installed after the accident.

The analysis in Trevino v. Gates, 99 F.3d 911 (9th Cir. 1996) holding modified by Navarro v. Block, 250 F.3d 729 (9th Cir. 2001) shows that only pre-incident events are relevant to establishing a custom for Monell purposes. In Trevino plaintiff alleged that the city had a custom of indemnifying police officers for punitive damage awards. Plaintiff alleged this custom was the driving force behind her constitutional violation. In examining the evidence, the Trevino Court looked only at punitive damage cases the city took action on prior to the date of plaintiff’s alleged constitutional violation. (Id. At 919) The court specifically pointed out that, of the nine punitive damage cases plaintiff relied on, two of them involved votes about indemnification that occurred after plaintiff’s alleged constitutional violation. (Id. At 919) As to those two cases, the court only considered that the city had posted an appellate bond because that action had occurred before plaintiff’s alleged constitutional violation.

Plaintiff’s own meet and confer efforts identify that the production of personnel files are not unlimited. (See Exhibit E). In the rulings provided by Plaintiff’s counsel, the Court limited production to prior acts and training related to the alleged constitutional violations. In this case, the only relevant prior acts or training are related to Plaintiff’s claim of excessive force.

D. CONCLUSION

For the above reasons, the Court should deny Plaintiff’s motion. If the motion is not denied, the ordered production should be limited to pre-incident acts, training and personnel information related to claims or allegations of use of force.

(v) PLAINTIFF’S REQUEST FOR PRODUCTION OF

**DOCUMENTS TO DEFENDANT CITY OF GARDEN GROVE,
SET 1, ITEM NO. 21.**

"Any and all investigations of Garden Grove Police Officer, Defendant, Bryan Meers, by the City of Garden Grove District Attorney's Office, the California Attorney General, the FBI, the United States Attorney General's Office, the Office of the United States Attorney or the Office of Civil Rights."

**(vi) DEFENDANT CITY OF GARDEN GROVE RESPONSE
TO REQUEST FOR PRODUCTION, SET 1, ITEM NO. 21.**

Please See; "DECLARATION OF SERGEANT CRAIG MCIVER IN SUPPORT OF OFFICIAL INFORMATION PRIVILEGE CLAIMED", attached to this Motion as Exhibit [D]

**(vii) PLAINTIFF'S ARGUMENT FOR COMPELLING
PRODUCTION OF DOCUMENTS REQUESTED
BY REQUEST TO PRODUCE SET 1, ITEM NO. 21.**

Plaintiff hereby incorporates the entirety of the points and authorities and arguments stated in Plaintiff's arguments for Production of Documents, set one, item number 20.

**(viii) DEFENDANT'S ARGUMENT AGAINST COMPELLING
A FULL RESPONSE TO PLAINTIFF'S REQUEST
TO PRODUCE SET 1, ITEM NO. 21.**

Defendant hereby incorporates the entirety of the points and authorities and arguments stated in Defendant's Arguments for Production of Documents, Set One, No. 20.

**(ix) PLAINTIFF'S REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT CITY OF
GARDEN GROVE, SET 1, ITEM NO. 22.**

1 "Any and all investigations of Garden Grove Police Officer, Defendant,
2 Bryan Meers, for use of excessive force."

3 **(x) DEFENDANT CITY OF GARDEN GROVE RESPONSE**
4 **TO REQUEST FOR PRODUCTION, SET 1, ITEM NO. 22.**

5 Please See; "DECLARATION OF SERGEANT CRAIG MCIVER IN
6 SUPPORT OF OFFICIAL INFORMATION PRIVILEGE CLAIMED", attached to
7 this Motion as Exhibit [D]

8 **(xi) PLAINTIFF'S ARGUMENT FOR COMPELLING**
9 **PRODUCTION OF DOCUMENTS REQUESTED BY**
10 **REQUEST TO PRODUCE SET 1, ITEM NO. 22**

11 Plaintiff hereby incorporates the entirety of the points and authorities and
12 arguments stated in Plaintiff's arguments for Production of Documents, set one,
13 item number 20.

14 **(xii) DEFENDANT'S ARGUMENT AGAINST COMPELLING**
15 **A FULL RESPONSE TO PLAINTIFF'S REQUEST**
16 **TO PRODUCE SET 1, ITEM NO. 22**

17 Defendant hereby incorporates the entirety of the points and authorities and
18 arguments stated in Defendant's Arguments for Production of Documents, Set One,
19 No. 20.

20 **(xiii) PLAINTIFF ANDREW GARCIA'S REQUEST**
21 **FOR PRODUCTION OF DOCUMENTS TO DEFENDANT**
22 **CITY OF GARDEN GROVE, SET 1, ITEM NO. 25.**

23 "A copy of City of Garden Grove Police Department discipline file of Garden
24 Grove Police Officer, Defendant Bryan Meers, including any record of discipline,
25 use of force, employment application, training, reprimands, demotions, resignation,
26 retirement or termination, (the City may redact the officer's personal information,
27

1 such as social security numbers, home addresses, telephone numbers, health
 2 insurance information, family information, medical information, worker's
 3 compensation information, insurance information and the like)."

4 **(xiv) DEFENDANT CITY OF GARDEN GROVE RESPONSE**
 5 **TO REQUEST FOR PRODUCTION, SET 1, ITEM NO. 25.**

6 Please See; "DECLARATION OF SERGEANT CRAIG MCIVER IN
 7 SUPPORT OF OFFICIAL INFORMATION PRIVILEGE CLAIMED", attached to
 8 this Motion as Exhibit [D].

9
 10 **(xv) PLAINTIFF'S ARGUMENT FOR COMPELLING**
 11 **PRODUCTION OF DOCUMENTS REQUESTED**
 12 **BY REQUEST TO PRODUCE SET 1, ITEM NO. 25.**

13 Plaintiff hereby incorporates the entirety of the points and authorities and
 14 Arguments stated in Plaintiff's arguments for Production of Documents, set one,
 15 item number 20.

16 **(xvi) DEFENDANT'S ARGUMENT AGAINST COMPELLING**
 17 **A FULL RESPONSE TO PLAINTIFF'S REQUEST**
 18 **TO PRODUCE SET 1, ITEM NO. 25.**

19 Defendant hereby incorporates the entirety of the points and authorities and
 20 arguments stated in Defendant's Arguments for Production of Documents, Set One,
 21 No. 20.

22 **(xvii) PLAINTIFF ANDREW GARCIA'S REQUEST**
 23 **FOR PRODUCTION OF DOCUMENTS TO DEFENDANT**
 24 **CITY OF GARDEN GROVE, SET 1, ITEM NO. 26.**

25 "A copy of the City of Garden Grove Police Department personnel file of
 26 Garden Grove Police Officer, Defendant Bryan Meers, including employment
 27

1 applications, training, performance reviews, re-training, and other documents
 2 contained therein, (the City may redact the officer's personal information, such as
 3 social security numbers, home addresses, telephone numbers, health insurance
 4 information, family information, medical information, worker's compensation
 5 information, insurance information and the like)."

6 **(xviii) DEFENDANT CITY OF GARDEN GROVE RESPONSE**
 7 **TO REQUEST FOR PRODUCTION, SET 1, ITEM NO. 26.**

8 Please See; "DECLARATION OF SERGEANT CRAIG MCIVER IN
 9 SUPPORT OF OFFICIAL INFORMATION PRIVILEGE CLAIMED", attached to
 10 this Motion as Exhibit [D].

11 **(xix) PLAINTIFF'S ARGUMENT FOR COMPELLING**
 12 **PRODUCTION OF DOCUMENTS REQUESTED BY**
 13 **REQUEST TO PRODUCE SET 1, ITEM NO. 26.**

14 Plaintiff hereby incorporates the entirety of the points and authorities and
 15 arguments stated in Plaintiff's arguments for Production of Documents, set one,
 16 item number 20.

17 **(xx) DEFENDANT'S ARGUMENT AGAINST COMPELLING**
 18 **A FULL RESPONSE TO PLAINTIFF'S REQUEST**
 19 **TO PRODUCE SET 1, ITEM NO. 26.**

20 Defendant hereby incorporates the entirety of the points and authorities and
 21 arguments stated in Defendant's Arguments for Production of Documents, Set One,
 22 No. 20.

23 **(xxi) PLAINTIFF ANDREW GARCIA'S REQUEST**
 24 **FOR PRODUCTION OF DOCUMENTS TO DEFENDANT**
 25 **CITY OF GARDEN GROVE, SET 1, ITEM NO. 30.**

"Any and all internal affairs investigations of Garden Grove Police Officer, Defendant, Bryan Meers."

**(xxii) DEFENDANT CITY OF GARDEN GROVE RESPONSE
TO REQUEST FOR PRODUCTION, SET 1, ITEM NO. 30.**

Please See; "DECLARATION OF SERGEANT CRAIG MCIVER IN SUPPORT OF OFFICIAL INFORMATION PRIVILEGE CLAIMED", attached to this Motion as Exhibit [D]

**(xxiii) PLAINTIFF'S ARGUMENT FOR COMPELLING
PRODUCTION OF DOCUMENTS REQUESTED
BY REQUEST TO PRODUCE SET 1, ITEM NO. 30.**

Plaintiff hereby incorporates the entirety of the points and authorities and arguments stated in Plaintiff's arguments for Production of Documents, set one, item number 20.

**(xxiv) DEFENDANT'S ARGUMENT AGAINST COMPELLING
A FULL RESPONSE TO PLAINTIFF'S REQUEST TO
PRODUCE SET 1, ITEM NO. 30.**

Defendant hereby incorporates the entirety of the points and authorities and arguments stated in Defendant's Arguments for Production of Documents, Set One, No. 20.

**(xxv) PLAINTIFF ANDREW GARCIA'S REQUEST
FOR PRODUCTION OF DOCUMENTS TO DEFENDANT
CITY OF GARDEN GROVE, SET 1, ITEM NO. 33.**

"All City of Garden Grove Police Department, Annual Employee Performance Evaluations of Defendant Garden Grove Police Officer Bryan Meers."

**(xxvi) DEFENDANT CITY OF GARDEN GROVE RESPONSE
TO REQUEST FOR PRODUCTION, SET 1, ITEM NO. 9**

1 Please See; “DECLARATION OF SERGEANT CRAIG MCIVER IN
 2 SUPPORT OF OFFICIAL INFORMATION PRIVILEGE CLAIMED”, attached to
 3 this Motion as Exhibit [D]

4 **(xxvii) PLAINTIFF’S ARGUMENT FOR COMPELLING**
 5 **PRODUCTION OF DOCUMENTS REQUESTED**
 6 **BY REQUEST TO PRODUCE SET 1, ITEM NO. 33.**

7 Plaintiff hereby incorporates the entirety of the points and authorities and
 8 arguments stated in Plaintiff’s arguments for Production of Documents, set one,
 9 item number 20.

10 **(xxviii) DEFENDANT’S ARGUMENT AGAINST COMPELLING**
 11 **A FULL RESPONSE TO PLAINTIFF’S REQUEST**
 12 **TO PRODUCE SET 1, ITEM NO. 33.**

13 Defendant hereby incorporates the entirety of the points and authorities and
 14 arguments stated in Defendant’s Arguments for Production of Documents, Set One,
 15 No. 20.

16 **IV.**

17 **PLAINTIFF'S CONCLUSION**

18 Plaintiff has tried informally and through the discovery shown above to
 19 obtain the relevant personnel files of Bryan Meers. Defense counsel has refused to
 20 produce the documents despite the fact Plaintiff has signed and the court has
 21 executed a protective order, thereby forcing Plaintiff to file this unnecessary
 22 Discovery Motion. Defendant’s arguments that plaintiff’s counsel did not fully meet
 23 and confer is nonsense. Defendant City ignores the fact Plaintiff signed a
 24 protective order to keep all documents marked confidential, confidential.

25 The defendant argues that the information sought is not relevant to prove
 26 Municipal Liability. The courts decide what is relevant or not relevant. There is a
 27

1 simple resolution for information that is deemed not relevant by the trial court. It is
 2 simply found inadmissible. At this state in the proceeding relevance is not a factor
 3 for production. The Defendant City has no justifiable reason for not providing
 4 Plaintiff with the personnel information sought in discovery and by this motion.
 5 This information is necessary for Plaintiff to properly prosecute his claims against
 6 defendant BRYAN MEERS.

7 For the reasons explained in this motion the court should order the defendant
 8 City to produce the information requested above..

9 **V.**

10 **DEFENDANT'S CONCLUSION**

11 The City submits that Plaintiff's motion should be denied in its entirety as the
 12 documents are protected by the official information privilege. If the Court is
 13 included to grant any portion of Plaintiff's motion, the City requests that the
 14 documents be limited in scope. Information related to an officer's personnel file and
 15 internal affairs investigations would only be relevant to a claim under Monell.
 16 Therefore, production should be limited to prior acts and training related to the
 17 alleged constitutional violation of excessive force. Any training or incident
 18 unrelated to the constitutional violation alleged or any subsequent incident cannot
 19 be the "moving force" behind the constitutional violation.

20
 21 Dated: September 19, 2016 GUIZAR, HENDERSON & CARRAZCO, L.L.P.

22
 23 By: /s/
 24 Humberto Guizar
 Attorneys for Plaintiff

